

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER, Diaspora of Holocaust  
of largest lead contaminated site in  
United States in Omaha, Nebraska,  
and VIOLET GOODWIN, on behalf of  
her minor children; Diaspora of  
Holocaust of largest lead  
contaminated site in United States in  
Omaha, Nebraska,

Plaintiffs,

v.

EPA, and PAULETTA ISETTS,  
Defendants.

CASE NO. 8:10CV416

MEMORANDUM  
AND ORDER

This matter is before the court on its own motion. On December 23, 2010, this court conducted an initial review of Plaintiffs' Complaint, finding that it failed to state a claim upon which relief may be granted as to all Defendants. (Filing No. [9](#).) In particular, the court determined that Plaintiffs "failed to submit proof that they provided the EPA with notice of their intent to sue." (*Id.* at CM/ECF p. 3.) The court also dismissed all claims against Defendant Isetts, and granted Plaintiffs until January 24, 2011, to file an amended complaint to adequately allege claims against the remaining Defendant. (*Id.* at CM/ECF p. 4.)

On January 24, 2011, Plaintiffs filed their Amended Complaint. (Filing No. [10](#).) However, even liberally construed, Plaintiffs' Amended Complaint suffers from the same defects as the original Complaint. Indeed, except for the addition of a letter from the EPA, the allegations of the Amended Complaint are identical to the original. As such, Plaintiffs have not set forth enough factual allegations to "nudge[] [their] claims across the line from

conceivable to plausible,” and their claims “must be dismissed” for failing to state a claim upon which relief can be granted. [\*Bell Atlantic Corp. v. Twombly\*, 550 U.S. 544, 569-70 \(2007\)](#); see also [\*Ashcroft v. Iqbal\*, 129 S. Ct. 1937, 1950 \(2009\)](#) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). For these reasons, and for the reasons set forth in the court’s December 23, 2010, Memorandum and Order, Plaintiffs’ Amended Complaint fails to state a claim upon which relief may be granted and is dismissed in its entirety.

IT IS THEREFORE ORDERED that:

1. Pursuant to [28 U.S.C. § 1915\(e\)\(2\)\(ii\)](#), Plaintiffs’ Amended Complaint is dismissed without prejudice because it fails to state a claim upon which relief may be granted; and
2. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 14<sup>th</sup> day of March, 2011.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge

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